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10/795,887	03/08/2004	Peter M. Bonutti	780-A04-012-1A	3185
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PAUL D. BIANCO			EXAMINER	
Fleit Gibbons Gutman Bongini & Bianco PL			FISHER, ELANA BETH	
21355 EAST DIXIE HIGHWAY				
SUITE 115			ART UNIT	PAPER NUMBER
MIAMI, FL 33180			3733	
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			08/18/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/795,887	<b>Applicant(s)</b> BONUTTI, PETER M.
	<b>Examiner</b> ELANA B. FISHER	<b>Art Unit</b> 3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 19 May 2009.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,4-15,19-27 and 29-45 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,4-15,19-27 and 29-45 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/06)  
 Paper No(s)/Mail Date 06/04/2009; 04/06/2009

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 1 recites the limitation "the first and second condyles" in the fifth line of the claim.

There is insufficient antecedent basis for this limitation in the claim.

3. Claim 1 recites the limitation "the guide member" in the seventh line of the claim. There is insufficient antecedent basis for this limitation in the claim.

4. Claim 1 recites the limitation "the width of the guide" in the ninth line of the claim.

There is insufficient antecedent basis for this limitation in the claim.

5. Claim 1 recites the limitation "the interior of the body" in the tenth line of the claim.

There is insufficient antecedent basis for this limitation in the claim.

6. Claim 1 recites the limitation "guide member" in the eleventh line of the claim. There is insufficient antecedent basis for this limitation in the claim.

7. Claim 1 recites the limitation "the cut bone of the knee" in the fourteenth line of the claim. There is insufficient antecedent basis for this limitation in the claim.

8. Claim 1 recites the limitation "the longest width of the bone to be cut" in the nineteenth line of the claim. There is insufficient antecedent basis for this limitation in the claim.

9. Claim 6 recites the limitation "the distal portion of the patient's leg" in the first and second lines of the claim. There is insufficient antecedent basis for this limitation in the claim.

10. Claim 7 recites the limitation "the other side of the joint" in the third line of the claim.

There is insufficient antecedent basis for this limitation in the claim.

11. Claim 8 recites the limitation "the distal portion of the patient's leg" in the first and second line of the claim. There is insufficient antecedent basis for this limitation in the claim.
12. Claim 15 recites the limitation "the guide member" in the fifth line of the claim. There is insufficient antecedent basis for this limitation in the claim.
13. Claim 15 recites the limitation "the guide member" in the ninth line of the claim. There is insufficient antecedent basis for this limitation in the claim.
14. Claim 15 recites the limitation "the longest width of bone to be cut" in the nineteenth line of the claim. There is insufficient antecedent basis for this limitation in the claim.
15. Claim 20 recites the limitation "the guide member" in the second line of the claim. There is insufficient antecedent basis for this limitation in the claim.
16. Claim 24 recites the limitation "the guide member" in the first line of the claim. There is insufficient antecedent basis for this limitation in the claim.
17. Claim 26 recites the limitation "the width of a portion of bone" in the sixth line of the claim. There is insufficient antecedent basis for this limitation in the claim.
18. Claim 26 recites the limitation "the guide member" in the eighth line of the claim. There is insufficient antecedent basis for this limitation in the claim.
19. Claim 26 recites the limitation "the width of the guide member" in the twelfth line of the claim. There is insufficient antecedent basis for this limitation in the claim.
20. Claim 26 recites the limitation "the long dimension of the incision" in the thirteenth line of the claim. There is insufficient antecedent basis for this limitation in the claim.
21. Claim 26 recites the limitation "the interior of the body" in the fourteenth line of the claim. There is insufficient antecedent basis for this limitation in the claim.

22. Claim 26 recites the limitation "the end portion of the bone" in the seventeenth line of the claim. There is insufficient antecedent basis for this limitation in the claim.

23. Claim 26 recites the limitation "the guide member" in the eighteenth line of the claim. There is insufficient antecedent basis for this limitation in the claim.

24. Claim 26 recites the limitation "the longest width of bone to be cut" in the last line of the claim. There is insufficient antecedent basis for this limitation in the claim.

25. Claim 29 recites the limitation "the guide member" in the first line of the claim. There is insufficient antecedent basis for this limitation in the claim.

26. Claim 30 recites the limitation "the guide member" in the second line of the claim. There is insufficient antecedent basis for this limitation in the claim.

27. Claim 31 recites the limitation "the guide member" in the second line of the claim. There is insufficient antecedent basis for this limitation in the claim.

28. Claim 32 recites the limitation "said guide member" in the first line of the claim. There is insufficient antecedent basis for this limitation in the claim.

29. Claim 33 recites the limitation "said guide member" in the first line of the claim. There is insufficient antecedent basis for this limitation in the claim.

30. Claim 34 recites the limitation "the guide member" in the first line of the claim. There is insufficient antecedent basis for this limitation in the claim.

31. Claim 35 recites the limitation "the swath" in the first line of the claim. There is insufficient antecedent basis for this limitation in the claim.

32. Claim 36 recites the limitation "the longest dimension of the incision" in the first and second lines of the claim. There is insufficient antecedent basis for this limitation in the claim.

33. Claim 37 recites the limitation "the first and second condyles of the knee" in the fourth line of the claim. There is insufficient antecedent basis for this limitation in the claim.
34. Claim 37 recites the limitation "the guide member" in the sixth line of the claim. There is insufficient antecedent basis for this limitation in the claim.
35. Claim 37 recites the limitation "the width of the guide surface" in the eighth line of the claim. There is insufficient antecedent basis for this limitation in the claim.
36. Claim 37 recites the limitation "the interior of the body" in the ninth line of the claim. There is insufficient antecedent basis for this limitation in the claim.
37. Claim 37 recites the limitation "the guide member" in the eleventh line of the claim. There is insufficient antecedent basis for this limitation in the claim.
38. Claim 37 recites the limitation "the guide member" in the fifteenth line of the claim. There is insufficient antecedent basis for this limitation in the claim.
39. Claim 45 recites the limitation "the first and second condyles of the knee" in the fifth line of the claim. There is insufficient antecedent basis for this limitation in the claim.
40. Claim 45 recites the limitation "the guide member" in the seventh line of the claim. There is insufficient antecedent basis for this limitation in the claim.
41. Claim 45 recites the limitation "the width of the guide" in the ninth line of the claim. There is insufficient antecedent basis for this limitation in the claim.
42. Claim 45 recites the limitation "the interior of the body" in the tenth line of the claim. There is insufficient antecedent basis for this limitation in the claim.
43. Claim 45 recites the limitation "the guide member" in the eleventh line of the claim. There is insufficient antecedent basis for this limitation in the claim.

44. Claim 45 recites the limitation "the cut bone of the knee" in the fourteenth line of the claim. There is insufficient antecedent basis for this limitation in the claim.

45. Claim 45 recites the limitation "the longest width of the bone to be cut" in the eighteenth line of the claim. There is insufficient antecedent basis for this limitation in the claim.

***Allowable Subject Matter***

46. Claims 1, 4-15, 19-27, and 29-45 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

***Response to Arguments***

47. Applicant's arguments with respect to claims 1, 4-15, 19-27, and 29-45 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELANA B. FISHER whose telephone number is (571)270-3643. The examiner can normally be reached on Monday through Friday from 8:30AM to 5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571)272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elana B Fisher/  
Examiner, Art Unit 3733  
/Eduardo C. Robert/  
Supervisory Patent Examiner, Art Unit 3733